IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.4828 OF 2005

Shivkishore Ramkumar Pandey : Petitioner

V/s.

State Bank of India corporation : Respondent

...

Mr.M.D.Angal for the petitioner.

Mr.Leon Samuel with Mr.Asif Lampwala i/b. M/s.Advani & Co., for the respondent.

...

CORAM : S.A. BOBDE, J.

August 10, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Samuel, learned counsel, appears and waives service of rule on behalf of the respondent.

Heard by consent.

2. The petitioner has challenged the order dated 28.4.2005 by which he has been directed to be committed to civil prison for not satisfying the decree passed in favour of the respondent.

3. Mr.Angal, the learned counsel for the petitioner,

relied on the provisions of section 51 of the C.P.C., which reads as follows:-

> "51. Powers of Court to enforce execution.-- Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree--
>
> (a) by delivery of any property specifically decreed;
>
> (b) by attachment and sale or by sale without attachment of any property;
>
> (c) by arrest and detention in prison for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section;
>
> (d) by appointing a receiver; or
>
> (e) in such other manner as the nature of the relief granted may require:
>
> Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgement-debtor an opportunity

of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied--

(a) that the judgement-debtor, with the object or effect of obstructing or delaying the execution of the decree,--

(i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or

(ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or

(b) that the judgement-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or

(c) that the decree is for a sum for which the judgement-debtor was bound in a fiduciary capacity to account.

> Explanation.-- In the calculation of the means of the judgement-debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree."

In particular, the learned counsel relied on the proviso and pointed out that the Court has not recorded any reasons in writing that it is satisfied as to either of the conditions enumerated in clauses (a), (b) and (c) to the proviso. This submission appears to be correct.

4. In the circumstances, the impugned order is set aside. The Civil Judge, Senior Division, Palghar i.e. the executing Court shall be entitled to proceed afresh, in accordance with law. The rule is made absolute in the aforesaid terms.

S.A. BOBDE, J.